

STATE OF MICHIGAN  
IN THE SUPREME COURT

MICHIGAN HOUSE OF  
REPRESENTATIVES  
and MICHIGAN SENATE,

Plaintiffs-Appellants,

v.

GRETCHEN WHITMER, in her  
official capacity as Governor for the  
State of Michigan,

Defendant-Appellee.

Supreme Court No. 161377

Court of Appeals No. 353655

Court of Claims No. 20-000079-MZ

**THIS APPEAL INVOLVES A  
RULING THAT A PROVISION OF  
THE CONSTITUTION, A STATUTE,  
RULE, OR REGULATION OR  
OTHER STATE GOVERNMENTAL  
ACTION IS INVALID.**

Patrick G. Seyferth (P47475)  
Stephanie A. Douglas (P70272)  
Susan M. McKeever (P73533)  
Bush Seyferth PLLC  
100 W. Big Beaver Rd., Ste. 400  
Troy, MI 48084  
(248) 822-7800  
[seyferth@bsplaw.com](mailto:seyferth@bsplaw.com)  
[douglas@bsplaw.com](mailto:douglas@bsplaw.com)  
[mckeever@bsplaw.com](mailto:mckeever@bsplaw.com)

Hassan Beydoun (P76334)  
General Counsel  
Michigan House of Representatives  
PO Box 30014  
Lansing, MI 48909  
[hbeydoun@house.mi.gov](mailto:hbeydoun@house.mi.gov)

Michael R. Williams (P79827)  
Frankie A. Dame (P81307)  
Bush Seyferth PLLC  
151 S. Rose St., Ste. 707  
Kalamazoo, MI 49007  
(269) 820-4100  
[williams@bsplaw.com](mailto:williams@bsplaw.com)  
[dame@bsplaw.com](mailto:dame@bsplaw.com)

William R. Stone (P78580)  
General Counsel  
Michigan Senate  
PO Box 30036  
Lansing, MI 48909  
[bstone@senate.michigan.gov](mailto:bstone@senate.michigan.gov)

*Attorneys for the Michigan House of Representatives and Michigan Senate*

**THE MICHIGAN LEGISLATURE'S  
MOTION FOR IMMEDIATE AND EXPEDITED CONSIDERATION  
OF ITS BYPASS APPLICATION FOR LEAVE TO APPEAL  
BEFORE DECISION BY THE COURT OF APPEALS**

Under MCR 7.311(E), the Michigan House of Representatives and the Michigan Senate (together, “the Legislature”) respectfully move for immediate and expedited consideration of the Legislature’s application for leave to appeal before decision by the Court of Appeals. Immediate consideration of the Legislature’s application for leave to appeal is necessary because of the substantial impact that the challenged orders have had—and will continue to have—on both Michigan’s citizens and its constitutional structure.

The Governor is acting pursuant to emergency powers that she does not have while undermining laws that she is charged to enforce. She is currently regulating every aspect of nearly 10 million lives without statutory or constitutional authority to do so. The case, then, presents one of highest public importance.

The Court of Claims has already held that one of the two statutory bases upon which the Governor’s declarations purport to rest cannot support them. The Legislature contends that the second statutory basis—at least under the broad construction adopted by the Governor—is improper as well. Even the Court of Claims acknowledged that the two statutes were intimately connected, signaling that the infirmity in one might point the way toward an infirmity in the other. This problem must be addressed fast.

This Court will inevitably be asked to review any decision of the Court of Appeals. Both sides of this case have expressed their wishes for an immediate and final resolution. Realistically, resolution can only come by way of this Court. Delaying resolution of the application will only leave two branches of government in

a state of limbo and all Michiganders in a state of uncertainty. Further, the Legislature understands that the Governor intends to continue issuing orders premised on her improper declarations of emergency and disaster. A decision from this Court will inform the parties concerning which branch may exercise authority going forward, whereas deferral to the Court of Appeals would only extend the period of ambiguity as to the Governor's powers. And this Court's decision would provide crucial guidance for the lower courts, who are currently grappling with many other cases brought concerning the Governor's emergency orders—cases that could soon wind up back here.

This lack of clarity is especially problematic in the midst of COVID-19, when the pillars of government should not be forced to guess at their respective roles in managing the crisis. The need for emergency action from *all* branches of government is evident. Other courts have recognized the same, moving quickly to address questions of authority in the crisis. See generally, e.g., *Kelly v Legislative Coordinating Council*, 460 P3d 832, 834 (Kan, 2020) (after inter-branch original action concerning exercise of emergency powers during pandemic was filed on April 9, the Supreme Court of Kansas heard and decided case just two days later); cf. *Wisconsin Legislature v Palm*, No. 2020AP765-OA, 2020 WL 2465677, at \*3 (Wis, May 13, 2020) (exercising original jurisdiction over claim challenging executive's statutory authority to issue pandemic-related order given that "the order ... impact[ed] every person in Wisconsin, as well as persons who c[a]me into Wisconsin, and every 'non-essential' business").

The Legislature has served a copy of this motion on the Governor. The parties had previously agreed to accept service of filings via email.

WHEREFORE, the Legislature respectfully requests that the Court consider its application for leave to appeal immediately and then grant it.

Respectfully submitted,

By: /s/ Patrick G. Seyferth  
 Patrick G. Seyferth (P47475)  
 Stephanie A. Douglas (P70272)  
 Susan M. McKeever (P73533)  
 Bush Seyferth PLLC  
 100 W. Big Beaver Rd., Ste. 400  
 Troy, MI 48084  
 (248) 822-7800  
[seyferth@bsplaw.com](mailto:seyferth@bsplaw.com)  
[douglas@bsplaw.com](mailto:douglas@bsplaw.com)  
[mckeever@bsplaw.com](mailto:mckeever@bsplaw.com)

Hassan Beydoun (P76334)  
 General Counsel  
 Michigan House of Representatives  
 PO Box 30014  
 Lansing, MI 48909  
[hbeydoun@house.mi.gov](mailto:hbeydoun@house.mi.gov)

By: /s/ Michael R. Williams  
 Michael R. Williams (P79827)  
 Frankie A. Dame (P81307)  
 Bush Seyferth PLLC  
 151 S. Rose St., Ste. 707  
 Kalamazoo, MI 49007  
 (269) 820-4100  
[williams@bsplaw.com](mailto:williams@bsplaw.com)  
[dame@bsplaw.com](mailto:dame@bsplaw.com)

William R. Stone (P78580)  
 General Counsel  
 Michigan Senate  
 PO Box 30036  
 Lansing, MI 48909  
[bstone@senate.michigan.gov](mailto:bstone@senate.michigan.gov)

*Attorneys for the Michigan House of Representatives and Michigan Senate*

Dated: May 24, 2020